IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 3858 of 2005

Between:

1 V. Srinivas, S/o. V.A. Prasad,
R/o. 8-1-441, Shivajinagar, Secunderabad.
2 V.A. Prasad,
R/o. 8-1-441, Shivajinagar, Secunderabad.
3 Megastone Pvt Ltd., A.N. Reddy Farms,
2-1-88/6 Bandlaguda, Hyderabad-68, rep. by its Director

V. Srinivas, S/o. V.A. Prasad, 45 years.

..... PETITIONERS

AND

1 Andhra Bank, (A Govt of India, Under Taking), rep. by its Chairman and Managing Director, Saifabad, Hyderabad.
2 Andhra Bank, (A Govt of India Under taking) rep. by its Authorized Officer and Asst. General Manager, Andhra Bank Somajiguda Branch, 1st Floor Astral heights, Road No. 1, Banjara Hills, Hyderabad.
3 Asset Reconstruction Company (India) Ltd., rep. by its Vice President and Group head, 17th floor Express Towers, Nariman Point, Mumbai 400 021.
4 APITCO LIMITED, (Formerly Andhra Pradesh Industrial and Technical Consultancy Organisation Ltd.,) rep. by its Managing Director, 8th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.
5 Reserve Bank of India, rep. by its Deputy General Manager, Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue any appropriate Writ, Order or direction, preferably Writ in the nature of Mandamus, declaring the action of the respondents- in proceeding to initiate action attaching the petitioners properties invoking the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act without giving any opportunity and proceedings in contravention to the guidelines issued by the Hon'ble apex court as illegal, arbitrary and violative of Article 14, 21 300-A of Constitution of India and opposed to the principles of natural justice and set aside the same directing the respondents not to dispossess the petitioners without giving them an opportunity and it is further prayed that this Hon'ble Court may be pleased to grant stay of all further proceedings including stay of dispossession of the petitioners with respect to their residential property bearing No.8-1-441, R.P.Road Shivajinarar Secunderabad pending the present writ petition and to pass such other or further orders as this Hon'ble Court may deem fit and proper in circumstances of the case.

For the Petitioners: Mr. D. Prakash Reddy, Senior Counsel for Mr.Harender Prasad, Advocate.

For Respondent Nos.1 and 2: Mr. Nuty Ram Mohan Rao, Standing Counsel.

For Respondents 3 and 4: Mr. S. Niranjan Reddy, Advocate.

The Court made the following :

ORDER: (per Sri B. Sudershan Reddy, J)

The petitioners in the instant writ petition invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the action of the respondents in proceeding to initiate action attaching their properties invoking the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act without giving any opportunity and proceeding in contravention of the guidelines issued by the apex Court as illegal and arbitrary. The petitioners also pray for issuing consequential directions to the respondents not to dispossess them without providing them an opportunity and stay dispossession in respect to the residential property bearing No. 8-1-441, situated at R.P Road, Shivajinagar, Secunderabad.

We have heard the learned senior counsel Sri D. Prakash Reddy; Sri Nuty Ram Mohan Rao, learned Standing Counsel appearing on behalf of respondent Nos. 1 and 2 and Sri S. Niranjan Reddy, learned counsel appearing on behalf of respondents 3 and 4. Respondent No. 5 is a formal party.

Having heard the learned counsel on either side, we are of the opinion that facts in detail are not required to be noticed in view of certain admissions made by the 1st respondent in its counter affidavit. In the counter affidavit filed by the Assistant General Manager, Somajiguda Branch, it is inter alia stated that in order to streamline the process of recovery, the respondent – Bank had established a separate branch by name Special Asset Recovery Management Branch (SARM Branch). All nonperforming assets whose value is more than
Rs.50.00 Lakhs were transferred to the said branch. It is admitted that the objections/representation filed by the petitioners were received on
16-09-2004 vide proceedings No. 534/45/824 dated 17-09-2004 (a copy of the representation is made available for the perusal of the Court). The objections so received by the respondent – Bank were accordingly communicated to the SARM Branch. It is stated that the respondent – Bank is in the process of considering the objections filed by the petitioners herein and the respondent – Bank will require at least three weeks time to depose of the same on merits.

It is thus evident that the petitioners herein have made the objections/representation

which is under the active consideration of the 1st respondent. Sri S. Niranjan Reddy, learned counsel for respondents 3 and 4 submits that the assets have already been transferred in favour of respondents 3 and 4 by the 1st respondent and therefore, the question of consideration of the objections by the 1st respondent at this stage may not arise. It is not necessary for us to express any opinion on this issue since the factum of the petitioners making such a representation on

16-09-2004 is admitted in the counter affidavit filed by the 1st respondent. It is between respondents 1 and 2 on the one hand and respondents 3 and 4 on the other as to how and in what manner the objections preferred by the petitioners are required to be considered and disposed of. There is no escape from the obligation to consider the objections preferred by the petitioners before proceeding further in the matter. Having received the objections from the petitioners, the respondents without considering the same could not have attached the property. Therefore, the order of attachment and all consequential proceedings initiated by the respondents are set aside.

The writ petition is accordingly allowed with a direction to the respondents to take an appropriate decision with reference to the objections preferred by the petitioners, dated 16-09-2004, and further objections/representation, if any, to be preferred within three days from today. Obviously, the further proceedings in the matter shall depend upon the decision to be taken by the respondents and disposal of the objections already preferred and to be preferred.

(B. Sudershan Reddy, J)

06-04-2005

(C.V. Ramulu, J)

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Note: Furnish Copy by tomorrow.

B/O

To

1. The Chairman and Managing Director, Andhra Bank, (A Govt of India, Under Taking), Saifabad, Hyderabad.

2. The Authorized Officer and Asst. General Manager, Andhra Bank, (A Govt of India Under taking), Somajiguda Branch, 1st Floor Astral heights, Road No. 1, Banjara Hills, Hyderabad.

3. The Vice President and Group Head, Asset Reconstruction Company (India) Ltd., 17th floor Express Towers, Nariman Point, Mumbai 400 021.

4. The Managing Director, APITCO LIMITED, (Formerly Andhra Pradesh Industrial and Technical Consultancy Organisation Ltd.,) 8th Floor, Parishram Bhavan, Basheerbagh, Hyderabad.

5. The Deputy General Manager, Reserve Bank of India, Saifabad, Hyderabad.

6. Two CD copies.